

Preface

Every lease negotiation encompasses collaboration among several disciplines, including construction, engineering, accounting, and tax, and we would be remiss if we did not acknowledge in general the contribution of many experts in those fields to our inventory of knowledge. Special thanks to industry veteran Bruce Tobin, whose creativity in imagining solutions for deals we have worked on together has always marveled us.

There is a wealth of information contained in this book, but if there is only one point you remember it should be this: *the lease is the law*. Unlike other areas of real estate that are subject to major statutory schemes (e.g., zoning, subdivision, condominiums, or even residential leases), there is limited statutory authority in most states on commercial leases. If a dispute arises in a commercial lease, you can examine case law for application of the common law, but our experience is that this approach is of limited utility since most disputes are fact-sensitive. The best and sometimes only source for the rights and obligations of the parties to a lease is the lease itself. In other words, the attorneys for the landlord and the tenant are a mini-legislature. They are writing the law to be applied.

If you become involved in many commercial lease negotiations, you will find that the lease often consists of a litany of horrors. Both sides strive to protect themselves against injustices that they suffered in prior deals. Maybe the tenant endured a leaky roof that a landlord refused to repair. Maybe the landlord got snookered on a guaranty that had nothing behind it. Often the deal point upon which a party digs in its heels may not have anything to do with that particular landlord or tenant; both sides need to be cognizant of this factor and work toward a mutually satisfactory solution. As aptly expressed in the song “The Gambler” by Kenny Rogers, “You’ve got to know when to hold ’em, know when to fold ’em.”

The basic premise of this book is to give the attorney who “dabbles” in commercial real estate leases a practical guide to lease negotiations and language. So-called experts may find the approach too simplistic or not “legal” enough. However, the authors each negotiate over 200 leases per year, and have been doing it since the age of dinosaurs, so what is written here offers a good guide to commercial real estate lease negotiations on the topics covered, with examples of clauses to work from.

The goal for the tenant’s attorney is to get the tenant’s business open quickly and with as much money left in his pocket as possible to operate his business—not to line the

attorney's pocket with huge amounts of money. A tenant starting out with a good lease and enough money will generate much more work for a principled attorney down the line than a broke client whose attorney took advantage of him.